

139

REQUEST FOR COUNCIL ACTION

MEETING

DATE: 8-18-03

AGENDA SECTION:

PUBLIC HEARINGS

ORIGINATING DEPT:

PLANNING

ITEM NO.

E-3

ITEM DESCRIPTION: Land Use Plan Amendment Petition #02-03 by West 80 Development LLC to amend the Land Use Plan designation from "Low Density Residential" to "Commercial" on approximately 3.02 acres of land. The property is located north of 48th St. SW, west of TH 63 South and east of 11th Ave. SW.

PREPARED BY:

Brent Svenby,
Planner

May 27, 2003

City Planning and Zoning Commission Recommendation:

The City Planning and Zoning Commission held a public hearing on July 23, 2003 to consider the Land Use Plan Amendment request for the property. The Commission also reviewed a Zone Change Petition, GDP, conditional use permit and variances for the property.

Mr. Wade DuMond, of Yaggy Colby Associates, addressed the Commission and explained the applications submitted by the applicant.

The Commission reviewed the land use plan amendment request based on the criteria as included in the staff report and recommended approval, with staff suggested findings as included in the staff report.

Mr. Staver made a motion to recommend approval of Land Use Plan Amendment #02-11 by West 80 Development LLC with the staff-recommended findings. Mr. Quinn seconded the motion. The motion carried 7-0.

Planning Staff Recommendation:

See attached staff report dated July 17, 2003

Council Action Needed:

- 1. The Council may approve or deny this petition. The Council's decision must be supported by findings based on the criteria listed in the Land Use Plan (as included in the staff report).***
- 2. If the Council wishes to proceed with the land use plan amendment as petitioned, it should instruct the City Attorney to prepare a resolution supported by findings of fact and conclusions of law.***

Attachments:

- Staff Report dated July 17, 2003
- Minutes of the July 23, 2003 CPZC Meeting

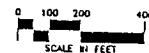
Distribution:

- City Administrator
- City Attorney: Legal Description attached
- Planning Department File
- Applicant: This item will be considered some time after 7:00 p.m. on Monday, August 18, 2003 in the Council / Board Chamber at the Rochester – Olmsted Government Center Building
- Yaggy Colby Associates

COUNCIL ACTION: Motion by: _____ Seconded by: _____ to: _____.

LOT LINES AND LOT NUMBERS AS SHOWN ARE APPROXIMATE; ADDITIONAL OR FEWER LOTS OF DIFFERENT SIZES ARE INTENDED AND SHALL BE ALLOWED.

PLEASE SEE CITY OF ROCHESTER ZONING ORDINANCE FOR ALLOWED DENSITIES, INTENSITY AND LAND USES.



ENGINEERS
SURVEYORS
LANDSCAPE ARCHITECTS

717 THIRD AVENUE SOUTHEAST
ROCHESTER, MINNESOTA 55904
507-260-6180
FAX 507-260-3031
EMAIL INFO@YACCT.COM

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LANDSCAPE ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

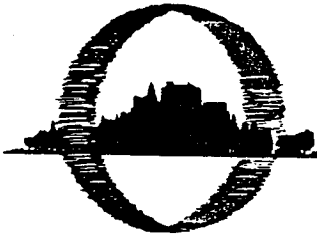
NUMBER _____ DATE _____

WEST 80 DEVELOPMENT
ROCHESTER, MINNESOTA
ZONE CHANGE MAP

RECEIVED
JUN 25 2003
ROCHESTER OLMDST
PLANNING DEPARTMENT

PROJECT
NUMBER 7869
COMP/FILE
FILE 7869 ZONE CHANGE
DATE 06/25/03
DRAWN BY WCD, WN
CHECKED BY RL
REVISIONS

SHEET NUMBER

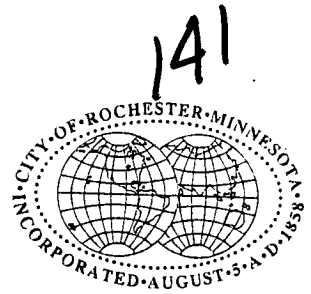


ROCHESTER-OLMSTED PLANNING DEPARTMENT

2122 Campus Drive SE, Suite 100 • Rochester, MN 55904-4744

COUNTY OF
Olmsted

www.olmstedcounty.com/planning



DATE: July 17, 2003 REVISED

TO: Rochester Planning & Zoning Commission

FROM: Mitzi A. Baker, Senior Planner

RE:

- * Land Use Plan Amendment #02-03 ;
- * Zoning District Amendment #02-11;
- * Amendment to the approved 48th Street GDP #159, now named the "West 80 Development".

Location: Property located north of 48th St. SW, west of TH 63 and east of 11th Ave. SW.

These applications were scheduled for public hearings in front of the Rochester Planning and Zoning Commission on September 25, 2002. At the request of the applicant, these items were all tabled indefinitely. Since that time, MnDOT has completed land acquisitions impacting the original GDP, and the applicant now requests these items be removed from the table. The Planning Department did provide new public hearing notices for these items to be heard July 23, 2003.

BACKGROUND:

In May 2001, the City approved a General Development Plan, Land Use Plan Amendment and Zoning District Amendment for property located north of 48th St. SW and west of TH 63. The approvals included designating 45.66 acres of land for "commercial" uses on the Land Use Plan, rezoning that portion of the property to the M-1 (Mixed Commercial-Industrial) district and rezoning of the western 36 acres to the R-2 (Low Density Residential) district.

CURRENT PROPOSAL & WHAT'S NEW:

The applicant is now requesting an amendment to the approved GDP and is requesting approval of a Land Use Plan amendment and Zoning District Amendment to designate an additional 3.02 acres of land for "Commercial" uses on the Land Use Plan and amend the zoning of this same acreage from the R-2 (Low Density Residential) district to the M-1 (Mixed Commercial-Industrial) district. Concurrent with these applications, the applicant is requesting approval of an Excavation permit to operate a Quarry on the property zoned M-1.

MnDOT has now purchased the western portion of the approved GDP which encompasses nearly all of the land that was previously zoned R-2, much of which is in the Floodplain. As a result of the purchase, a small area of R-2 zoned land located adjacent to the west boundary of the existing M-1, would remain in private ownership. The applicant is now requesting approval to rezone that portion of the property to the M-1 district to include it in the future development of the



142
M-1 zoned area. Right-of-way for the interchange and 48th Street improvements has also been purchased. As a result, the total site area included in the GDP has been significantly reduced.

Proposed amendments to the approved GDP include:

- Remove a private road extending west from Commercial Drive
- Identify on-site stormwater management ponds
- Identify Wetland in northeast corner
- Identify MnDOT Right-of-Way purchase areas including land west of the proposed M-1 zoned development; Also re-defined the boundary of this GDP to include only the area proposed for development in the M-1 district
- Identify a proposed centerline alignment for Commercial Drive at the north property that proposes shifting the alignment of this roadway to the east – this would require amending or rescinding Official Street Map (OSM) #12 at some future date
- The Plan no longer identifies access locations from Commercial Drive
- Proposal to amend the Land Use Plan and re-zone 3.02 acres of land from R-2 to M-1.
- Proposed modifications to lot configurations – primarily to reflect the proposed zone change and MnDOT land acquisition.

LAND USE PLAN & ZONING DISTRICT - CONSIDER THE COMPREHENSIVE AMENDMENT:

It is reasonable to consider these requests as though they were part of the original request to amend the Land Use Plan and Zoning Districts, and therefore consider the findings (and conditions) adopted as part of the previous approvals.

As previously noted in the GDP staff report, this property will be required to use pre-alteration grades and conditions of the site in preparing site capacity calculations.

Enclosed are the findings made in support of the Land Use Plan Amendment, Zoning District Amendment and General Development Plan approved by the City Council in May 2001. These findings could be adopted for the current proposed amendments, if considered as part of the comprehensive amendments already approved. Slight modifications would need to be made to reflect the request to change the Land Use Plan designation and Zoning District to "commercial" and M-1 (Mixed Commercial-Industrial) on 3.02 acres of land in addition to the 45.66 acres approved in 2001. These changes are noted on the attached documents.

ISSUES SPECIFIC TO THE GENERAL DEVELOPMENT PLAN :

If the Planning Commission decides to proceed with this application, staff suggests the following conditions/modifications to GDP #159 (48th Street/West 80):

1. ***The proposed future centerline alignment of Commercial Drive, at the north end of the property, is subject to future amendment of Official Street Map (OSM) #12 and securing permits for impacting a delineated Wetland. If the OSM #12 is not amended and/or permits for impacting the Wetland are not approved, the alignment must follow the existing approved OSM.***
2. ***Lot access locations to Commercial Drive SW must meet spacing requirements and may require joint access locations. Any proposed uses for this property that differ from those utilized in development of the TIR for the TH 63 project may require a new TIR, and potentially require modifications to the access locations. Access to all lots within this development shall be from Commercial Dr. SW, and***

spacing is subject to approval by the road authority based on proposed use of individual lots.

3. *Construction of a temporary turnaround, and dedication of a temporary easement will be required at the northerly extent of Commercial Drive, until such time the property to the north is developed and the roadway is extended.*
4. *Pedestrian facilities will be required along the entire frontages of Commercial Drive SW, and the entire frontage of the Property abutting 48th St. SW.*
5. *Prior to Final Plat submittal, and/or development of this Property, the applicant shall enter into a development Agreement with the City that outlines the obligations of the applicant relating to, but not limited to, stormwater management, right-of-way dedication, transportation improvements, access control, pedestrian facilities, extension of utilities, and contributions for public infrastructure. Access, maintenance and ownership of the proposed ponds and wetland areas shall also be addressed in the Development agreement.*
6. *All pond facilities shall be platted on separate Outlots.*
7. *Access control shall be dedicated along the entire frontage of TH 63 and 48th Street at the time of platting. Access control shall also be platted along the frontage of Commercial Drive, at the time of platting, except where access openings are approved.*
8. *Development of this property shall be phased to limit the amount of traffic generated prior to completion of planned roadway improvements to provide adequate public infrastructure to serve the development of the property.*
9. *Watermain extension and connections must be provided as required by RPU.*

Order of Action:

The Commission should take action on these items in the following order:

1. Land Use Plan Amendment #02-03
2. Zoning District Amendment #02-11
3. Amendment To GDP #159, 48th Street/West 80 Development

144

BEFORE THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA

In Re: Land Use Plan Amendment #00-08
and Zoning District Amendment #00-16.

Findings of Fact,
Conclusions of Law,
and Order

On May 21, 2001 the Common Council of the City of Rochester conducted a public hearing, with notice to the public, to hear the application of R.L. Hexum & Associates (hereinafter referred to as "Applicant") to amend the land use plan designation for approximately 46 acres of land located along the north side of 48th Street S.W., west of T.H. 63 and west of 11th Avenue S.W. (hereinafter referred to as "Site"). The Applicant seeks to change the Site's current land use designations of "Low Density Residential" and "Medium Density Residential" to the "Commercial" designation.

The Applicant also seeks a zoning district change for the Site from the R-1 District (Mixed Single Family) zoning district to the M-1 District (Mixed Commercial-Industrial). The Applicant also seeks a zoning district change for an additional 36 acres of land located along the north side of 48th Street S.W., west of T.H. 63 and east of 11th Avenue S.W., from the R-1 District (Mixed Single Family) to the R-2 District (Low Density Residential).

Applicant's representative was present at the May 21, 2001, hearing and spoke in favor of the request. One person testified in opposition to the request.

During the hearing, the Council received and considered the December 22, 2000, Planning and Zoning Department's staff report as well as the minutes of the December 27, 2000,

Planning and Zoning Commission meeting.

Following the public hearing, the Council considered and discussed the entire matter. Based upon that evidence which was presented at the May 21, 2001, hearing, the Council made the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The Applicant seeks to change the 46 acres of the Site's current land use designations of "Low Density Residential" and "Medium Density Residential" to the "Commercial" designation.
2. The Applicant also seeks a zoning district change for the 46 acres of the Site from the R-1 District (Mixed Single Family) zoning district to the M-1 District (Mixed Commercial-Industrial).
3. The Applicant also seeks a zoning district change for an additional 36 acres of land located along the north side of 48th Street S.W., west of T.H. 63 and east of 11th Avenue S.W., from the R-1 District (Mixed Single Family) to the R-2 District (Low Density Residential)..
4. The property is currently undeveloped agricultural land that includes pasture, crop land and a farmstead.
5. The property to the north is undeveloped land zoned M-1 in the City. Conditional use permits have been approved for a portion of this property to be utilized for mining/extraction activities. In 1998, this property was rezoned from R-1 to its current zoning district. The property to the south is zoned B-4 (General Commercial) at the intersection with T.H. 63 South. The rest of the property is zoned R-1 (Mixed Single Family). A public park is located adjacent to 11th

144
Avenue S.W. The property to the east is T.H. 63 South. The property lying east of T.H. 63 South is currently zoned R-1 (Mixed Single Family). The property to the west (west of 11th Avenue S.W.) is currently outside of the City. There are several residential lots in the RA (Rural Residential) District along the west side of 11th Avenue S.W.

6. A portion of the Site is included in Official Map #12, which identifies right-of-way limits for a future interchange at 48th Street S.W. Access to the Site will be limited to one access along 48th Street S.W., as shown on the General Development Plan. Access is also proposed along 11th Avenue S.W.

7. In 1995, ROCOG completed a corridor study of the T.H. 63 corridor from T.H. 52 to Interstate 90. The purpose of the study was to identify the preferred long-term facility design for the corridor. The adopted plan suggests that the long-term goal should be to move towards eventual development of a freeway, with access to T.H. 63 provided via interchanges. Locations that were identified for future interchange development include 40th and 48th Streets S.W.

8. In addition, the Currently Valid Thoroughfare Plan identifies a future north-south collector street between 40th Street S.W., and 48th Street S.W.

Land Use Plan Amendment

9. The Land Use Map reflects the policies and goals of the Land Use Plan.

10. Chapter II, Policies and Recommendations, of the Future Land Use Plan for the Rochester Urban Service Area recommends 21 Growth Guidelines of which ten are part of the Recommended Growth Pattern which constitute the general policy basis of the Plan. The applicable guidelines are as follows:

- a) growth should occur in conjunction with community services and facilities and existing growth centers and should be exemplified by the illustration of the Multiple Growth Center Concept.
- b) all municipal service areas should be well defined and developed to accommodate and encourage new development.
- c) nonprime agricultural land and environmental areas located beyond designated growth areas should be retained for agricultural or open space uses where possible.
- d) commercial development should be concentrated in growth centers, with regional, community, and neighborhood shopping facilities provided in the Rochester area and community commercial activities in the smaller growth centers.
- e) preserve land which has a unique recreational, geological or environmental significance.
- f) where possible, growth patterns should be structured so as not to interfere with residential neighborhoods, prime agricultural land, and significant environmental areas; prime agricultural land should be preserved.

11. Chapter III of the Land Use Plan states, in part, that before land is desirable for medium density residential and commercial uses, it must exhibit a number of important features including those expressed in the location criteria found in Chapter II.

12. The Planning Staff applied the Rochester Urban Service Area Land Use Plan's regional shopping center location criteria and highway commercial location criteria in processing this application. The regional shopping center criteria are:

- A. located at the intersection of a major arterial or higher level street with similar or higher level streets;
- B. having level terrain;
- C. having good pedestrian, vehicular and transit access; and,
- D. having at least 40 acres of land suitable for commercial development.

148

The highway commercial criteria are:

- A. on major highway approaches with access to a frontage road (or in the case of lodging establishments, in close proximity to major visitor attractions such as a medical complex);
- B. having relatively level terrain;
- C. providing for a concentration of similar uses;
- D. not detrimental to the safety or appearance of the surrounding area.

13. The Planning and Zoning Staff Report, dated December 22, 2000, indicated the following facts for the "regional shopping center" portion of the application analysis:

- A. T.H. 63 is designated as a freeway on the ROCOG Thoroughfare Plan, 48th Street is designated as an upgrade arterial. This property is located at the intersection of a planned arterial and a higher order roadway. An interchange is planned for this intersection, which is slated for construction in 2003. The Thoroughfare Plan also identifies a future Collector roadway to be located between 48th Street S.W., and 40th Street S.W.;
- B. The easterly portion of this site, adjacent to TH 63, is relatively level to gently rolling. Moving westerly, the property ascends to the top of a hill. Elevations range from 1070 adjacent to T.H. 63 to 1178 at the top of the hill.

The criteria requiring level terrain is not met for over half of this site. Other factors that will change the character of this area, and the topography of this site, should be given consideration. Access to this property from 48th Street S.W., will be limited to one location that is fixed. No other access will be permitted from T.H. 63 or 48th Street S.W. The fixed location of access to 48th is located at the southern base of a hill. Constructing a collector roadway from this point to 40th Street S.W., as identified in the ROCOG Thoroughfare Plan, will undoubtedly impact this hill and the natural topography of this property, regardless of the alignment. Additionally, constructing an interchange at 48th Street S.W., and T.H. 63 and upgrading 48th Street S.W., to a four-lane divided arterial will result in changes to the existing topography of this site and the area. Lastly, the abutting property to the north was designated for "industrial" uses and rezoned M-1 in 1998. Although most of that property is relatively level to gently rolling, portions of that property did not meet the requirement for level terrain of less than 6% slopes. The hill located on this property extends north onto the abutting property.

- C. Planned improvements for this area include an interchange at 48th Street and T.H. 63, upgrading 48th Street to an arterial road with pedestrian facilities along both sides of the road, and a future collector road between 48th Street S.W., and 40th Street S.W. In addition, 11th Avenue is designated a collector on the ROCOG Thoroughfare Plan. Upon completion of the planned improvements, this property will have good vehicular and pedestrian access.

3.02 Acres in addition to the already approved

- D. The portion of the property included in this petition includes 45.66 acres of land. Access to this property from 48th Street S.W., will be limited to one location that is fixed. No other access will be permitted from T.H. 63 or 48th Street S.W. The fixed location of access to 48th Street is located at the southern base of a hill. Constructing a collector roadway from this point to 40th Street S.W., as identified in the ROCOG Thoroughfare Plan, will undoubtedly impact this hill and the natural topography of this property, regardless of the alignment. Additionally, constructing an interchange at 48th Street S.W., and T.H. 63 and upgrading 48th Street S.W., to a four-lane divided arterial will result in changes to the existing topography of this site and the area. Lastly, the abutting property to the north was designated for "industrial" uses and rezoned M-1 in 1998. Although most of that property is relatively level to gently rolling, portions of that property did not meet the requirement for level terrain of less than 6% slopes. The hill located on this property extends north onto the abutting property.

14. The Planning and Zoning Staff Report, dated December 22, 2000, indicated the following facts for the highway commercial portion of the application analysis:

- A. This property is located at the intersection of 48th Street S.W., and T.H. 63. The ROCOG Thoroughfare Plan identifies a future interchange at this intersection with a future collector road providing access between 48th Street S.W., and 40th Street S.W. This collector road would function as a frontage road between the two roadways. In addition, 48th Street S.W., is designated as a future upgrade arterial road. Since the improvements are not in place at this time, it may be necessary to phase development of this property;
- B. The easterly portion of this site, adjacent to T.H. 63 is relatively level to gently rolling. Moving westerly, the property ascends to the top of a hill. Elevations range from 1070 adjacent to T.H. 63 to 1178 at the top of the hill.

The criteria requiring level terrain is not met for over half of this site. Other factors that will change the character of this area, and the topography of this

151

site, should be given consideration. Access to this property from 48th Street S.W., will be limited to one location that is fixed. No other access will be permitted from T.H. 63 or 48th Street S.W. The fixed location of access to 48th is located at the southern base of a hill. Constructing a collector roadway from this point to 40th Street S.W., as identified in the ROCOG Thoroughfare Plan, will undoubtedly impact this hill and the natural topography of this property, regardless of the alignment. Additionally, constructing an interchange at 48th Street S.W., and T.H. 63 and upgrading 48th Street S.W., to a four-lane divided arterial will result in changes to the existing topography of this site and the area. Lastly, the abutting property to the north was designated for "industrial" uses and rezoned M-1 in 1998. Although most of that property is relatively level to gently rolling, portions of that property did not meet the requirement for level terrain of less than 6% slopes. The hill located on this property extends north onto the abutting property.

- C. In 1998, the abutting property owner to the north petitioned the City to amend the Land Use Plan designation for that property from the "low density residential" designation to the "industrial" designation and also petitioned to rezone the property from R-1 (Mixed Single Family) to M-1 (Mixed Commercial Industrial). Those petitions were approved in June, 1998, resulting in approximately 54.66 acres of land located east of Willow Creek, north of this property, being designated for "industrial" uses and being zoned M-1 (Mixed Commercial Industrial).

Property included in this petition is proposed to be designated "commercial." A petition to rezone this property to the M-1 (Mixed Commercial Industrial) district is being considered concurrent with this petition. Amending the land use plan designation for this property from "low density residential" to "commercial" could provide for a concentration of similar uses.

- D. Amending the land use plan designation for this property will likely affect the general appearance of this area and the natural topography. There are, however, other factors that will contribute to changing the appearance of this area. The fixed location of access to this property from 48th Street S.W., to some degree dictates a need to alter the landscape to provide access to and through this site. This access location is at the southern toe of the hill on this property. Future construction of an interchange at 48th Street S.W., and T.H. 63, a collector road between 48th Street S.W., and 40th Street S.W., and upgrades to 48th Street S.W., will also change the character of this area. Additionally, approval to amend the land use plan designation and zoning for the abutting property to the north to an "industrial" land use designation and M-1 zoning district in 1998 will contribute to a change in the appearance of the surrounding area. The hill

151
located on the property included in this petition extends north onto the abutting property.

With the infrastructure improvements planned for this area, approval of this land use plan amendment is not expected to be detrimental to the safety of the surrounding area. Since the roadway improvements are not currently in place, this development may need to be phased.

15. On December 27, 2000, the Planning and Zoning Commission held a public hearing to review the proposed land use plan amendment. The Commission adopted the Staff's suggested findings of fact and its recommendation. The Commission recommended that the City approve Land Use Plan Amendment #00-08.

Zoning District Amendment

16. Rochester Code of Ordinances (RCO) §60.338 provides that the Council shall approve a petition to amend the zoning map or the text of the zoning ordinance if the amendment satisfies one of the following criteria:

- A. The area, as presently zoned, is inconsistent with the policies and goals of the Comprehensive Plan;
- B. The area was originally zoned erroneously due to a technical or administrative error;
- C. While both the present and proposed zoning districts are consistent with the Plan, the proposed district better furthers the policies and goals of the Comprehensive Plan as found in Chapters 2 and 3 of the Rochester Urban Service Area Land Use Plan, Chapter 3 of the Housing Plan, and Chapter 10 of the ROCOG Long Range Transportation Plan; or
- D. The area has changed or is changing to such a degree that it is in the public interest to rezone so as to encourage development or redevelopment of the area.

152

17. Rochester Code of Ordinances (RCO) §60.338 also provides that the Council shall approve a petition to amend the zoning map or the text of the zoning ordinance if the amendment satisfies all of the following criteria:

- A. the permitted uses allowed within the proposed zoning district will be appropriate on the subject property and compatible with adjacent properties and the neighborhood; and
- B. the proposed amendment does not involve spot zoning. (Spot Zoning involves the classification of a single lot or several small lots to a district which is different than that assigned to surrounding properties, for reasons inconsistent with the purposes set forth in this ordinance, the state enabling legislation, or the decisions of courts in this state.)

18. The Planning and Zoning Staff Report, dated December 22, 2000, suggested the following findings of fact concerning the proposed R-2 rezoning:

- A. The Rochester Urban Service Area Land Use Plan designates this property as appropriate for "low density residential" types of uses. Uses within the R-2 zoning district would be consistent with the current land use designation. Rezoning this property would help further the policies and goals found in Chapters 2 and 3 of the Rochester Urban Service Area Land Use Plan, which encourage developing a range of densities and development styles. This will also help to further goals and policies found within Chapter 3 of the Housing Plan to increase the supply of housing.
- B. Uses within the R-2 zoning district would be appropriate on the property and compatible with adjacent properties.
- C. Uses within the R-2 zoning district would be appropriate on the subject property and would be compatible with adjacent properties and the neighborhood. Compatibility between the R-2 and M-1 land included in this petition could be improved through buffering and screening. Topographic changes between the zoning districts will contribute to providing a buffer between the uses. The amendment to R-2 would be consistent with the Rochester Urban Service Area Land Use Plan and would not be considered spot zoning.

153

19. The Planning and Zoning Staff Report, dated December 27, 2000, suggested the following findings of fact concerning the proposed M-1 rezoning:

3.02 Acres in addition to the already approved, X

- A. A Land Use Plan amendment is being considered concurrent with this application. If the request to designate 45.66 acres of this property for "commercial" uses is approved, rezoning 45.66 acres of this property to the M-1 (Mixed Commercial-Industrial) district would be consistent with the land use designation for this property.

Additionally, this area is changing. Future construction of an interchange at 48th Street and T.H. 63, a collector road between 48th Street S.W., and 40th Street S.W., and upgrades to 48th Street S.W., will change the character of this area. Additionally, the City approved a land use plan amendment and zoning district amendment in 1998 for the abutting property to the north to designate that property as appropriate for "industrial" uses to rezone the property M-1.

- B. In 1998, the abutting property owner to the north petitioned the City to amend the Land Use Plan designation for that property from the "low density residential" and "medium density residential" designations to the "industrial" designation and also petitioned to rezone the property from R-1 (Mixed Single Family) to M-1 (Mixed Commercial-Industrial). Those petitions were approved in June, 1998, resulting in approximately 54.66 acres of land located east of Willow Creek, north of this property, being designated for "industrial" uses and being zoned M-1 (Mixed Commercial-Industrial).

The easterly portion of this site, adjacent to T.H. 63, is relatively level to gently rolling. Moving westerly, the property ascends to the top of a hill. Elevations range from 1070 adjacent to T.H. 63 to 1178 at the top of the hill.

The criteria requiring level terrain is not met for over half of this site. Other factors that will change the character of this area, and the topography of this site, should be given consideration. Access to this property from 48th Street S.W., will be limited to one location that is fixed. No other access will be permitted from T.H. 63 or 48th Street S.W. The fixed location of access to 48th is located at the southern base of a hill. Constructing a collector roadway from this point to 40th Street S.W., as identified in the ROCOG Thoroughfare Plan, will undoubtedly impact this hill and the natural topography of this

154

property, regardless of the alignment. Additionally, constructing an interchange at 48th Street S.W., and T.H. 63 and upgrading 48th Street S.W., to a four-lane divided arterial will result in changes to the existing topography of this site and the area. Lastly, the abutting property to the north was designated for "industrial" uses and rezoned M-1 in 1998. Although most of that property is relatively level to gently rolling, portions of that property did not meet the requirement for level terrain of less than 6% slopes. The hill located on this property extends north onto the abutting property..

3.02 Acres in addition to the already approved

- C. A land use plan amendment is being considered concurrent with this application. If the request to designate 45.66 acres of this property for "commercial" uses is approved, rezoning 45.66 acres of this property to the M-1 (Mixed Commercial-Industrial) district would be consistent with the land use designation for this property and would not be considered spot zoning.

20. On December 27, 2000, the Planning and Zoning Commission held a public hearing to review the proposed rezoning request. The Commission adopted the Staff's suggested findings of fact. The Commission recommended that the City approve Zoning District Amendment #00-16.

CONCLUSIONS OF LAW

1. This matter is properly before the Common Council pursuant to Minn. Stat. §462.355, subdivisions 2 and 3, and §462.356, subdivisions 2, 3, and 4.
2. The Common Council of the City of Rochester determines that the Land Use Plan and Land Use Map should be amended, upon consideration of the goals, objectives, strategies and policies of the current Urban Service Area Land Use Plan. The entire proposed Land Use Plan amendment is consistent with the existing Land Use Plan.
3. By the greater weight of the evidence and testimony presented at the hearing, the Common Council hereby determines that Applicant has satisfied all of the eight location criteria

155-

for the "Commercial" (regional shopping center and highway commercial) land use designation provided by the Land Use Plan for the Rochester Urban Service Area for the Site.

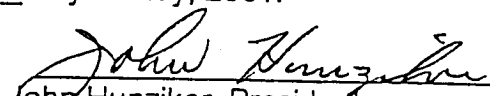
4. By the greater weight of the evidence and testimony presented at the hearing, the Common Council hereby determines that the Site satisfies the criteria for a zoning district change pursuant to Rochester Code of Ordinances §60.338 from the R-1 District to the M-1 (Mixed Commercial-Industrial) District and the R-2 (Low Density Residential) District.

ORDER

The Common Council of the City of Rochester, pursuant to Minn. Stat. §462.355, subdivision 2, does hereby order that the Applicant's request for an amendment to the land use to amend the land use plan designation for 46 acres of the Site's current land use designations of "Medium Density Residential" and "Low Density Residential" to the "Commercial" designation be in all things approved.

The Common Council also orders that the Applicant's request to amend the Zoning Ordinance to change the zoning district classification of Site from the R-1 Zoning District to the M-1 District (Mixed Commercial-Industrial) be in all things approved. The Council also order that the Applicant's request to amend the Zoning Ordinance to change the zoning district classification of 36 acres from the R-1 Zoning District to the R-2 District (Low Density Residential) be in all things approved.

Dated at Rochester, Minnesota this 31st day of May, 2001.


John Hunziker, President
City of Rochester Common Council

154
July 11, 2003

Mr. Brent Svenby
Rochester-Olmsted Planning Department
2122 Campus Drive SE
Rochester, MN 55904

**RE: Summary – Neighborhood Meeting
West 80 GDP, CUP, Zone Change, & LUPA**

Dear Brent:

A neighborhood meeting was held July 11, 2003 at Yaggy Colby Associates regarding the West 80 General Development Plan (GDP), Conditional Use Permit for a Quarry activity (CUP), zone change, and Land Use Plan Amendment (LUPA) requests. One neighbor was in attendance as well as Mr. & Mrs. Roger Carlsen from West 80 Development, LLC (please see attached sign-in sheet). The layout, grading plan, zone change area, and future use of the property were discussed.

The neighbor was primarily looking for any changes that may have occurred since the previous neighborhood meeting on September 19, 2002. There were no objections or neighbor concerns with the GDP, CUP, zone change, grading plan, or LUPA as proposed.

If you have any questions or concerns, please call.

Sincerely,

YAGGY COLBY ASSOCIATES



Wade Neubauer, EIT

WN
YCA #7869 LD2

Attachment
cc: Roger Carlsen

document numbers. The easement documents shall be perpetual, establish a clear policy on how maintenance will be handled, establish the rights of usage, and define how use of the easement is limited or assignable. Public safety personnel and their vehicles shall be assigned the right of passage at all times.

12. Outlot G shall be dedicated to the City, and an access easement must be dedicated such that access does not need to occur from the public road.

* Land Use Plan Amendment Petition #02-03 and Zoning District Amendment #02-11 by West 80 Development LLC to amend the Land Use Plan designation from "Low Density Residential" to "Commercial" and the zoning from R-2 (Low Density Residential) to the M-1 (Mixed Commercial-Industrial) district on approximately 3.02 acres of land. The property is located north of 48th St. SW, west of TH 63 South and east of 11th Ave. SW.

AND

Amendment to General Development Plan #159 West 80 Development (formerly known as 48th St. GDP) by West 80 Development LLC. The applicant is proposing to amend the approved GDP changing the alignment of the roadway through the property and identifies the portion of the property that has been purchased by MNDOT. The property is located north of 48th St. SW, west of TH 63 South and east of 11th Ave. SW.

AND

Type III, Phase II Conditional Use Permit request #02-46 and Variance Request #03-16 by West 80 Development, LLC. The applicant is requesting approval for an excavation permit to operate a Quarry on property located north of 48th St. SW and west of T.H. 63. The applicant proposes to lower the existing hill on the property by approximately 60 feet and to export over 800,000 cubic yards of material within two to nine years. This application includes a request for a variance to setback requirements.

Mr. Brent Svenby presented the staff report, dated July 17, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Ms. Petersson moved to remove Land Use Plan Amendment Petition #02-03, Zoning District Amendment #02-11, Amendment to General Development Plan #159 West 80 Development (formerly known as 48th St. GDP), and Conditional Use Permit #02-46 and Variance #03-16 by West 80 Development LLC from the table. Mr. Burke seconded the motion. The motion carried 7-0.

Mr. Svenby reviewed his July 23, 2003 memorandum which including additional conditions for the general development plan and conditional use permit.

Mr. Haeussinger stated that there should be a sufficient slope in the grading plan so there is not a wall.

The applicant's representative, Wade DuMond of Yaggy Colby Associates (717 Third Avenue SE, Rochester MN), addressed the Commission. He indicated that a second neighborhood meeting was held, but not required. He explained that the Planning Department sent the notices for them using the City standards of notification. One individual attended the meeting.

Mr. DuMond stated that the applicant agrees with the staff-recommended conditions for the general development plan. He stated that Ames Construction won the bid for the Highway 63 project. He explained that a good amount of the material from the conditional use permit would

159

likely be used for the Highway 63 project. He stated that the applicant agrees with the additional conditions listed in the July 23, 2003 memorandum from Mr. Svenby with regard to the conditional use permit. However, he indicated that the Ordinance requires plantings within 30 feet from the property line.

Mr. DuMond stated that the applicant agrees with recommended condition number 4 in principle at this time.

Mr. DuMond stated a new traffic impact report would be completed before the final plat is approved.

Mr. DuMond stated that access to 48th Street SW would be closed. Ames Construction would be driving within the right-of-way. There have been preliminary discussions for access through the property to the north onto 40th Street SW. This will be worked out prior to excavation work.

Mr. DuMond stated that the excavation permit would expire in 9 years, but that he did not believe it would take that long.

Mr. DuMond stated that the rock on the property is not the same geological stone that is behind Chateau Theatres.

Mr. Haeussinger expressed concern with what could go along Commercial Drive.

Mr. DuMond stated that the truck stop would be relocated out there. There is an agreement between MnDOT and the truck stop that it must be moved to its new location before they can begin construction on the site.

Mr. DuMond explained that there would be only one rock face on the north side. They would be reducing the slopes off the west side heading down into the flood plain area. The reclamation plan requires 700-800 trees to be planted.

Mr. Svenby asked Mr. DuMond if he knew why MnDOT wanted the sanitary sewer out of the right-of-way.

Mr. DuMond stated that MnDOT indicated that the sanitary sewer could be located in the right-of-way, but that maintenance to the sanitary sewer would not be allowed.

Mr. Joon Uhn, of 5497 Leslie Lane SW, Rochester MN, addressed the Commission. He stated that he lives in Southern Hills Third. He stated that staff indicated that it is being proposed as approved under previously approved concepts. Also, the applicant is stating that there wasn't much of a change was being presented. He expressed concern with a 60 foot elevation change, 800,000 cubic yards of materials being moved, the property would be rezoned from residential to commercial, a truck stop would be located there, and concern with regard to wetlands and terrain. He stated that his home was farther than the City standard for notification, but asked that the City notify his subdivision, as well as the golf course community, of this proposed plan since it affects them as well.

Mr. Quinn explained that only a small part of the property would be rezoned to the M-1 zoning district. He indicated that the rest of the property is currently zoned M-1.

Mr. Joon stated that, from the resident's perspective, the proposed plans are a big change to the neighborhood. He asked that the City notify his subdivision and the golf course community of the changes proposed since it does have a large impact on the neighborhood.

Mr. Quinn stated that he could notify his neighbors of the proposal and have them go to the City Council to express their concerns. He explained that the City has notification standards and indicated that the items are published in the Rochester Post Bulletin and is also located on the internet.

Mr. Svenby stated that the City Council would hear the proposals on August 18, 2003. He explained the City notification standards and explained that, in 1997, they increased the distance from 250 feet to 500 feet and at least notifying 50 property owners. With regard to the proposed applications, they actually went out over 1,000 feet to reach 50 property owners.

Mr. Joon asked how he could notify the City Council of his concerns.

Ms. Wiesner responded by attending the meeting, emailing them, or writing a letter.

Mr. Haeussinger stated that Dennis Hanson was his council representative.

Ms. Nora Dooley, of 5497 Leslie Lane SW, Rochester MN, addressed the Commission. She expressed concern with a mining operation going on for 9 years. She asked if the roadway could be a 4 lane before the mining operation begins.

Mr. DuMond stated that the trucks could not use 48th Street SW for hauling. He stated that they would have to have a contract to use 40th Street or the contractor for Highway 63 would start mining the site and using it for the Highway 63 project.

Ms. Dooley expressed concern with visibility, the traffic with regard to the soccer field and the mining operation next to it operating from 7 a.m. to 10 p.m., noise pollution, and by taking down the 60 foot hill.

Ms. Wiesner explained that there were some constrictive time frames, since the truck stop could not be moved until the site is ready.

Ms. Joon stated that she thought if more people were aware of what the mining operation entailed, they would be at the meetings complaining. She expressed concern with the area being an eye sore, especially the truck stop.

Mr. Quinn stated that the applicant is not asking for anything that has not already been discussed. All the applications are just occurring all at once.

Mr. Burke stated that it is a stipulation that hauling will not occur on 48th Street SW.

Mr. DuMond clarified that 48th Street SW would be used, once it was rebuilt, to gain access to Highway 63. There would be a full interchange at that time. Therefore, the site visibility would be changed.

Mr. Quinn stated that the Highway 63 and Highway 52 plans would be at the County Fair for interested individuals to look at. He explained that 48th Street SW would be dramatically changed.

With no one else wishing to be heard, Ms. Wiesner closed the public hearing.

Mr. Staver moved to recommend approval of Land Use Plan Amendment Petition #02-03 by West 80 Development LLC with the staff-recommended findings. Mr. Quinn seconded the motion. The motion carried 7-0.

Mr. Staver moved to recommend approval of Zoning District Amendment #02-11 by West 80 Development LLC with the staff-recommended findings. Ms. Petersson seconded the motion. The motion carried 7-0.

Mr. Quinn moved to recommend approval of Amendment to General Development Plan #159 West 80 Development (formerly known as 48th St. GDP) by West 80 Development LLC with the staff-recommended findings and conditions as revised by Mr. Svenby. Mr. Haeussinger seconded the motion. The motion carried 7-0.

CONDITIONS:

1. The proposed future centerline alignment of Commercial Drive, at the north end of the property, is subject to future amendment of Official Street Map (OSM) #12 and securing permits for impacting a delineated Wetland. If the OSM #12 is not amended and/or permits for impacting the Wetland are not approved, the alignment must follow the existing approved OSM.
2. Lot access locations to Commercial Drive SW must meet spacing requirements and may require joint access locations. Any proposed uses for this property that differ from those utilized in development of the TIR for the TH 63 project may require a new TIR, and potentially require modifications to the access locations. Access to all lots within this development shall be from Commercial Dr. SW, and spacing is subject to approval by the road authority based on proposed use of individual lots.
3. Construction of a temporary turnaround, and dedication of a temporary easement will be required at the northerly extent of Commercial Drive, until such time the property to the north is developed and the roadway is extended.
4. Pedestrian facilities will be required along the entire frontages of Commercial Drive SW, and the entire frontage of the Property abutting 48th St. SW.
5. Prior to Final Plat submittal, and/or development of this Property, the applicant shall enter into a development Agreement with the City that outlines the obligations of the applicant relating to, but not limited to, stormwater management, right-of-way dedication, transportation improvements, access control, pedestrian facilities, extension of utilities, and contributions for public infrastructure. Access, maintenance and ownership of the proposed ponds and wetland areas shall also be addressed in the Development agreement.
6. All pond facilities shall be platted on separate Outlots.
7. Access control shall be dedicated along the entire frontage of TH 63 and 48th Street

SW at the time of platting, except for the access opening along 48th Street SW for Commercial Drive SW. Access control shall also be platted along the frontage of Commercial Drive SW, at the time of platting, except where access openings are approved.

8. Development of this property shall be phased to limit the amount of traffic generated prior to completion of planned roadway improvements to provide adequate public infrastructure to serve the development of the property.
9. Watermain extension and connections must be provided as required by RPU.

Mr. Quinn moved to recommend approval of Type III, Phase II Conditional Use Permit request #02-46 by West 80 Development, LLC with the staff-recommended findings and conditions as revised by Mr. Svenby. Ms. Petersson seconded the motion. The motion carried 7-0.

CONDITIONS:

1. Prior to excavation, the applicant shall:
 - Grading, Drainage and Erosion Control Plans must be approved by the City;
 - The applicant shall submit a Blasting Plan to the City, in compliance with Section 62.1107, 1), m), prior to beginning the excavation;
 - A bond or other form of surety acceptable to the City Attorney shall be provided in an amount determined by the City Engineer sufficient to carry out the restoration of the mined area, and to control dust on haul roads if not adequately handled by the Applicant. Said surety is to be used by the City for restoration of the sit, and/or dust control measures, in the event the Owner fails to fulfill its obligations regarding restoration and/or dust control.
 - Submit a revised reclamation plan that has the required plantings all within the applicant's property (some plantings are shown on land owned by MnDOT) as well as identify adequate vehicular access to the proposed stormwater detention ponds. The plan shall also be consistent with the roadway alignment approved with the GDP.
2. Encroachment into the setback area is approved as long as the grading reclamation grades match the proposed reconstructed grade elevations of the TH 63 ramp and 48th St. SW profile and cross-sections as specified on the approved OSM and the TH 63 Layout Plan.
3. The reclamation/restoration grades shall match the proposed reconstructed grade elevations of TH 63 and ramp, and the 48th ST. SW profile and cross-sections as specified on the City approved Official Street Map #12, and the TH 63 Layout Plan.
4. The applicant shall execute a contribution agreement to address the Owner's obligations regarding Substandard Street Reconstruction charges for the frontage of 48th Street SW. In addition, the Agreement will include the Owner's obligations regarding the Capacity Component of the Transportation Improvement District charges that will be applicable to the development of individual lots within the industrial/commercial subdivision that will be developed one the mining activity is complete.
5. A TIR shall be completed, if it differs from the land use and trip generation

163

assumptions used in the TH 63 Traffic Study, to evaluate the impacts on the surrounding roadway, specifically TH 63 and 48th Street. Traffic improvements, including but not limited to, turn lanes, signage and warning lights at the proposed haul road access point to 48th St. SW.

6. Stormwater Management must be provided on-site via City approved on-site stormwater detention facilities. Adequate vehicular access shall be provided to the proposed stormwater detention ponds.
7. The applicant shall obtain approval of the haul road and temporary access permit for 48th Street SW from the Public Works Department prior to grading activities on the property. Evidence shall be provided that the applicant has rights across the property to the north. The applicant would also need to obtain a temporary access permit for the use of 40th Street SW from the Public Works Department.
8. The applicant is obligated for the cost to amend Official Street Map #12 to accommodate the alignment shown on the grading plan.
9. Approval of this permit is contingent upon the applicant obtaining a permit from MnDOT to work within the right-of-way and the alterations to the approved 48th Street Interchange Plans. If the permit is not approved by MnDOT, the applicant shall submit a revised plan to the Planning Department and Public Works Department for approval.
10. Approval of this permit is contingent upon the applicant obtaining a Wetland Replacement Plan for the wetlands being disturbed on property. Replacement plan approval shall be obtained prior to any grading activity occurring on the property. If the Replacement Plan is not approved by the Local Government Unit, the applicant shall revise the grading plan to avoid the wetland area.
11. Approval of this permit shall expire December 1, 2012, unless permit approval is extended as provided in Section 62.1110, 7 of the Rochester Zoning Ordinance and Land Development Manual. All reclamation activities must be complete prior to the date of expiration, consistent with reclamation standards of the Rochester Zoning Ordinance and Land Development Manual.
12. The owners shall dedicate a 30-foot wide public utility easement along the easterly line of the property, concurrent with the approval of the CUP, to accommodate the trunkline sanitary sewer relocation. The owner shall address, prior to any grading activity occurring on the property, the extra depth that will result based on the plan to place fill in the easement area.

Mr. Quinn moved to approve Variance Request #03-16 by West 80 Development, LLC with the staff-recommended findings. Mr. Burke seconded the motion. The motion carried 7-0.

FINDINGS:

EXCEPTIONAL CIRCUMSTANCES: There are no residential dwellings as land uses that directly abut this property to the west. The property to the west is mostly in the floodway or floodplain so limited residential development could occur within this area. The property to the southwest is zoned R-1 and is owned by the City of Rochester and is

developed as a park. The nearest dwelling is approximately 1,200 feet from the limits of the excavation activity included in this petition.

REASONABLE USE: Most of the property to the west is in the Floodway. Use of the property is very limited due to the Floodway designation of the property. Property to the southwest is developed as a city park. Though Variances may not be required to permit the reasonable use of the property involved, granting of the Variances would provide reasonable use of the site for extraction of the granular material resource.

ABSENCE OF DETRIMENT: The granting of this variance request does not appear to be materially detrimental to the public welfare or to other property in the area. The residential property to the west and southwest contains no residential dwellings it's mostly in the floodway or floodplain or developed as a city park so limited development could occur on the property. The property to the west has been purchased by MnDOT to be used as wetland replacement areas for the TH 63 project.

MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to the required minimum setback for an excavation area with an elevation change of greater than 10 feet to residentially zoned property. This finding would not pertain in the case of denial.

OTHER BUSINESS:

1. Asphalt Plant on TH 63 South

Ms. Petersson stated that she received phone calls regarding the asphalt plant with regard to the smell. She indicated that she visited the site and it did not smell like vanilla or cherry as indicated in their presentation to the Commission. Smoke was also bellowing out. She indicated that there wasn't anything that they could do about it, but could bring it to the Council's attention.

Ms. Petersson stated that the burner is started at 5 a.m.

Mr. Staver stated that the hours of operation were to begin at 5:30 a.m. He stated that the Commission discussed putting a beginning time of 7:30 a.m. but did not take formal action. He stated that he checked with the City Attorney and that there is nothing they can do at this point. After one year of operation, the conditional use permit could be reviewed. He explained the need for the Commission and Council to be more stringent on certain changes.

Ms. Wiesner stated that they are not in compliance with the smell.

Ms. Petersson stated that vanilla did not work so they tried almond which also did not work.

Ms. Wiesner stated that they wanted to start the burner at 5:30 a.m. so that they could begin picking up materials at 7:00 a.m.

Mr. Svenby stated that the City Council approved the conditional use permit until January 31, 2005. A review would occur October 2004. The Council wanted to give the contractor 2 construction seasons to review the operation.